

**STATE OF VERMONT  
BOARD OF MEDICAL PRACTICE**

In re: Melissa Carla Smith-Horn

Docket No. MPS 101-0804  
MPS 97-0605

MOTION FOR SUMMARY SUSPENSION

NOW COMES Petitioner, the State of Vermont, by and through Attorney General William H. Sorrell and the undersigned, James S. Arisman, Assistant Attorney General, and alleges as follows:

1. Melissa Carla Smith-Horn, M.D. (Respondent) holds Vermont Medical License Number 042-0010538, issued on December 24, 2002. Respondent practices in the fields of surgery and occupational medicine.

2. Jurisdiction vests in the Vermont Board of Medical Practice (Board) by virtue of 26 V.S.A. §§1353, 1354, & 1398 and 3 V.S.A. § 814(c).

## I. Background.

### A. Mishandling of Patient Medical Records.

3. The Vermont Board of Medical Practice opened this matter for investigation on August 8, 2004 following receipt of information from an officer of the Shelburne (Vermont) Police Department. The officer reported having observed the following on the morning of August 5, 2004:

Responded to a report of a suspicious incident. Upon arrival I met with the complainant who advised that while on his way to work he observed several medical records in front of a residence located at 130 Bayfield Drive, Shelburne, Vermont. Upon arrival to the residence I located what appeared to be over 500 confidential medical records. All of the records were contained inside red folders labeled with what appeared to be patient names. These records were strewn about the driveway in a manner consistent with items waiting pick-up from a trash collector.

The complainant advised that the woman who had been renting the house was a doctor and that she had recently moved to Melbourne [sic], FL to start a new practice. The name of the physician located inside several of the records was Melissa C. Smith-Horn.

According to the Hill-Donnelly Cross Reference Directory published July 2003, 130 Bayfield Drive telephone listing of (802 985-9462) was listed to Wesley R. Horn.

4. Officers of the Shelburne Police Department retrieved from the location in question, 130 Bayfield Drive, 14 cardboard boxes and one plastic bin containing patient medical records and transported these to their headquarters. After having been contacted, regarding this matter, investigative personnel of the Board of Medical Practice communicated with officers of the Shelburne Police Department and subsequently took into custody the subject medical records. The Board opened a complaint regarding Respondent's involvement, if any, with the patient medical records recovered from the driveway of her former residence.

5. Board Investigator Ruth Whitney communicated with Respondent in December 2004. Respondent reportedly made the following statements to Investigator Whitney:

Dr. Smith-Horn advised me that the records were left in the garage on the Friday during the first week of August [i.e., August 5, 2004] when the movers arrived to transport her and her husband's personal property to Florida. She made arrangements with a company that shreds documents to pick the boxes up on the following Monday. Dr. Smith-Horn cannot recall the name of the company, but advised that it was a company used by her former practice in Vermont. . . .

Dr. Smith-Horn repeatedly assured me that the documents were not medical Records, but were IME's (Independent Medical Evaluation Reports) that were all public record and that all the sensitive medical information and records had previously been expunged.

6. Investigator Whitney selected sample files from the medical records of Respondent Smith-Horn for examination. Investigator Whitney observed that the medical

records did not appear to be “public record” materials. Investigator Whitney also noted that many files in the boxes appeared to be medical evaluations performed by Respondent in workers’ compensation cases.

7. Review of the sample records indicated that the following types of information had ~~not~~ been expunged and that, in fact, such information was set forth in detail. This information within the records included: first, middle, and last names; gender; race; home address; telephone number; date of birth; social security number; marital status; educational information; employment and income information; social history; discussion of gynecological or genital condition and means of personal contraception; information regarding drug and alcohol use; discussion of mental condition and psychotropic drugs taken; medical history; current condition and results of physical examination; and evaluations of disabling conditions.

8. Board Investigator Paula Nenninger spoke with Respondent regarding this matter in May 2005. Her sworn affidavit regarding this matter is attached as Exhibit 1. Respondent stated that she had left the records in the locked garage at the residence and “told the landlord he would have to let the company in to pick them up.” Respondent stated again that the documents were not medical records and that they were “public record”. Respondent stated that she had made arrangements regarding the records with a company named “All Cycle”. All cycle is listed in the Burlington yellow pages under the heading “Office Records-Destruction”.<sup>1</sup>

9. Investigator Nenninger contacted personnel at All Cycle. She was told the

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1. Respondent also stated that she had contacted “Myers” about picking up the garbage in her garage. Myers is listed in the Burlington yellow pages under the heading, “Rubbish & Garbage Removal”.

following: (a) All Cycle had no record of any pickups at any time from 130 Bayfield Drive, Shelburne; (b) All Cycle had no record of ever having been requested to make a pick up from 130 Bayfield Drive; (c) All Cycle had never opened an account, based on having been contacted, with regard to the possible pickup of records located at 130 Bayfield Drive.

#### **B. Relevant Authority.**

10. The Code of Medical Ethics of the American Medical Association states the following with regard to patient medical records and documentation:

The information disclosed to a physician during the course of the relationship between physician and patient is confidential to the greatest possible degree. See Section 5.05, Confidentiality, AMA Code of Medical Ethics, 2004-2005 ed.

Where a physician's services are limited to performing an isolated assessment of an individual's health or disability . . . the information obtained by the physician as a result of such examinations is confidential and should not be communicated to a third party without the individual's prior written consent. . . . See Section 5.09, Confidentiality: Industry-Employed Physicians and Independent Medical Examiners, AMA Code of Medical Ethics, 2004-2005 ed.

In order to preserve confidentiality when discarding old records, all documents should be destroyed. See Section 7.05, Retention of Medical Records, AMA Code of Medical Ethics, 2004-2005 ed.

11. Under Vermont law, "[A] person authorized to practice medicine . . . shall not disclose any information acquired in attending a patient in a professional capacity . . . . See 12 V.S.A. § 1612(a), Patients' Privilege.

12. A covered health care provider may not disclose or divulge protected health care information except as may be permitted or required by the Federal Health Insurance Portability and Accountability Act, 45 CFR Subtitle A, Subchapter C, Section 164.502(a).

## **II. Improper Recordkeeping and Prescribing; Diversion of Drugs.**

### **A. Prescribing for Wesley Horn.**

13. The Board's initial investigation of Respondent's mishandling of medical records also produced indications that Respondent may have engaged in unprofessional conduct while caring for and prescribing for her husband. On numerous occasions during 2003 and 2004 Respondent prescribed medications for her husband, Wesley Horn. Pursuant to subpoena served at Respondent's former place of business, the Board's investigator learned that no written records existed to document any care or prescribing by Respondent for her husband.

### **B. Prescribing for Respondent's Physician Assistant.**

14. Board investigation also established from written records that Respondent had prescribed for her physician assistant, Susan Anderson, on three occasions in 2004. Pursuant to subpoena served at Respondent's former place of business, the Board's investigator learned that no written records existed as to any care or prescribing by Respondent for P.A. Anderson. One such prescription by Respondent was for Tussionex extended release suspension, 240 mL, a DEA Schedule III drug containing hydrocodone polistirex.

### **C. Other Prescribing Irregularities.**

15. The Board's investigation produced other evidence of possible irregularities in the operation of Respondent's medical practice. Records obtained during the Board's investigation identified the physician assistant in Respondent's office, Susan Anderson, as having prescribed on several occasions for Respondent's husband, Wesley Horn, during 2003 and 2004. Pursuant to subpoena served at Respondent's former place of business, the

Board's investigator learned that no written records existed to document any care or prescribing by P.A. Anderson for Respondent's husband.

#### **D. Diversion.**

16. On July 29, 2005, Investigator Nenninger and Detective Sergeant Glynn of the Vermont State Police interviewed one Beata Lipski, a former office employee in Respondent's medical practice at Occupational Health and Rehabilitation in South Burlington. Ms. Lipski stated that she had had a drug problem and had forged P.A. Anderson's name on written prescriptions for Hydrocodone on six or seven occasions. Hydrocodone is a DEA Schedule II drug.

17. Ms. Lipski stated that on one occasion Respondent Smith-Horn had written a prescription for her for a painkiller because she (Lipski) had claimed that her leg hurt. Later, Respondent came to Ms. Lipski and asked her employee to help her in a drug diversion scheme. Respondent said that she would write prescriptions for narcotics for Ms. Lipski. Respondent asked Lipski to use the prescription to get the narcotics, and Lipski was then to give these drugs to Respondent. Lipski followed this plan, but held back a few pills for herself after the prescriptions were filled. She delivered the remainder of each narcotic prescription to Respondent. The two split prescriptions for narcotics on 6 or 7 occasions.

18. Lipski eventually told Respondent that she had a drug problem, i.e., an addiction to opioids. Lipski told Respondent on one occasion that she had no money but needed some drugs. Respondent Smith-Horn allegedly reacted to this by writing a prescription for Hydrocodone for Lipski. Ms. Lipski stated that Respondent never took a history and

physical from her, examined her, or counseled her or referred her for treatment for her drug problem.

19. Respondent told Ms. Lipski on one occasion that her husband, Wesley Horn, had a drug problem and that the narcotics that she (Respondent) was diverting were for his use.

### **III. Respondent's Current Licensure Status.**

20. Respondent holds medical licenses in at least four States: Vermont, Oklahoma, Pennsylvania, and Florida. Her license in Oklahoma is listed as inactive/expired as of December 1, 2002. Her medical license in Pennsylvania is listed as not in good standing/expired as of 1988. Her Vermont medical license is listed as lapsed/not renewed as of November 30, 2004. Respondent's Florida medical license is currently active, and she is in practice in that State.

21. Respondent retains residual licensing rights in the State of Vermont. Pursuant to Vermont law, Respondent may act to renew her lapsed license and return to practice here by filing a renewal application, tendering the required fee, and paying the late renewal penalty. At present, until any action is taken by the State of Florida, she also may continue to practice medicine in Florida and write prescriptions for controlled substances. In light of Respondent's demonstrated course of irresponsible, unprofessional, and dishonest conduct, it is reasonable to conclude that her continued licensure as a physician represents a danger to patients and the public.

### **III. Motion for Summary Suspension.**

22. The Board of Medical Practice is broadly empowered to investigate and

adjudicate charges of unprofessional conduct by its licensees, impose disciplinary sanctions, issues licenses, and to suspend or revoke licenses for false or fraudulent representations or “immoral, unprofessional or dishonorable conduct.” 26 V.S.A. § 1398. The Legislature has declared that the regulation of professions and occupations is “for the purpose of protecting the public.” 26 V.S.A. § 3101.

23. It is well-settled that a *licensee* may not evade disciplinary action merely by resigning or allowing a license to expire. Perry v. Medical Practice Board, 169 Vt. 399, 404 (1999). “Otherwise, the licensee could apply for admission in another jurisdiction, or subsequently reapply in the same jurisdiction, and maintain that he or she has never been disciplined for professional misconduct. This would patently defeat the underlying purposes of the regulatory scheme to protect the public and maintain the integrity of the profession.” *Id.*

24. Where investigation discloses substantial grounds for action to protect the public, on the basis of false or fraudulent representations or immoral or dishonorable conduct, the safety of the public and the integrity of the profession may be best served, in the Board’s discretion, by issuing a formal ruling, so that a decision of record will be available in this State or in other licensing jurisdictions. *Cf. Perry*, *supra*, at 405. The interstate component of licensing, implemented by individual medical boards acting in the 50 States, is integral to the regulatory scheme governing the medical profession in the United States. *Id.* The authority to investigate to completion and, where necessary, to act pursuant to statute to protect the public, represents an integral and necessary component of the Board’s reciprocal duties vis a vis other licensing jurisdictions. *Id.*



25. “An agency having jurisdiction to conduct proceedings and impose sanctions in connection with conduct of a licensee or former licensee shall not lose jurisdiction if the license is not renewed or surrendered or otherwise terminated prior to initiation of such proceedings.” 3 V.S.A. § 814(d).

26. Respondent's continuing possession of a Vermont medical license and residual rights, as well as her continued practice of medicine in a sister jurisdiction presents an immediate and continuing danger to patients and to the health, safety, and welfare of the public in that her actions, as alleged above constitute **(a)** a gross failure to use and exercise on a particular occasion or the failure to use and exercise on repeated occasions, that degree of care, skill, and proficiency which is commonly exercised by the ordinary skillful, careful, and prudent physician engaged in similar practice under the same or similar conditions; 26 V.S.A. § 1354(a)(22); and/or **(b)** a failure to practice competently due to unsafe or unacceptable patient care or a failure to conform to essential standards of acceptable and prevailing practice; 26 V.S.A. § 1354(b); and/or **(c)** immoral, unprofessional, or dishonorable conduct; 26 V.S.A. § 1398. Respondent's conduct, as alleged, also evidences unfitness to practice medicine, 26 V.S.A. § 1354(a)(7). In sum, such conduct by Respondent is so egregiously unprofessional, harmful, and dangerous to individual patients and to the integrity of the field of medicine that such rights of Vermont licensure as Respondent possesses must be immediately suspended to protect the public, health, safety, and welfare.

27. A hearing on the merits at a later date, on charges to be filed by the State, will offer Respondent the opportunity to present any evidence she may possess with regard to the serious allegations at hand and will provide the opportunity for her to put the State to its

proof. In the interim, the public must necessarily be protected by an order of summary suspension of Respondent's right to practice medicine here and deferral, pursuant to Board Rule 3.3, of action on any license renewal application that may be presented by Respondent, pending further order of the Board.

28. The allegations as to Respondent's conduct are profoundly serious. Respondent's lack of judgment, failures of professional responsibility, dishonesty, and unethical conduct imperatively require emergency action by the Board, to protect the public health, safety, and welfare, by entry of an order of **summary suspension** of Respondent Smith-Horn's Vermont license to practice medicine, pending further proceedings before the Board. 3 V.S.A. § 814(c).

**WHEREFORE**, petitioner, the State of Vermont, respectfully moves the Board of Medical Practice for an order of **SUMMARY SUSPENSION** of the Vermont medical license of Respondent, Melissa Carla Smith-Horn, M.D., and deferral of Board any action upon any application for reinstatement of licensure from her, pending further Board hearing or other action with regard to this license. The State further moves the Board for entry of a finding that protection of the public health, safety, and welfare imperatively requires such emergency action, pursuant to 3 V.S.A. § 814(c),

Dated at Montpelier, Vermont this 3<sup>rd</sup> day of August ~~3~~, 2005.

STATE OF VERMONT

WILLIAM H. SORRELL  
ATTORNEY GENERAL

by:

  
JAMES S. ARISMAN  
Assistant Attorney General

Office of the  
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109 State Street  
Montpelier, VT  
05609

**STATE OF VERMONT  
BOARD OF MEDICAL PRACTICE**

***EXHIBIT 1***

In re: Melissa Carla Smith-Horn	)	
	)	
	)	Docket Nos. MPS 101-0804
	)	MPS 97-0605
	)	

**AFFIDAVIT OF INV. PAULA NENNINGER**

**COMES NOW** Alliant, Paula Nenninger, investigator, Vermont Board of Medical Practice, and being duly sworn and on oath, under penalties of perjury, does depose and state as follows:

1. I am an investigator for the Vermont Board of Medical Practice. I am responsible as a Board investigator for gathering information, evidence, and testimony regarding complaints and allegations against practitioners in the field of medicine who may have engaged in unprofessional conduct. I am certified as a full-time law enforcement officer by the Vermont Criminal Justice Training Council.

**Patient Medical Records**

2. Upon taking over my position in May 2005 at the Board of Medical Practice I was assigned an ongoing open case involving Melissa Carla Smith-Horn, M.D., i.e., MPS 101-0804. This case was initiated in August 2004 as a result of the receipt of information from the Shelburne Police Department indicating that 14 cardboard boxes and one plastic bin containing patient medical records had been left at the edge of a residential driveway in Shelburne (130 Bayfield Drive), formerly occupied by Dr. Smith-Horn. The records included numerous entries made under the name of Dr. Smith-Horn.

3. The patient records in question were retrieved by the Shelburne Police Department and later transferred to the custody of the Board of Medical Practice. Review of a random sample of the records indicated that these documents in fact were patient medical records and included health and personal information that is reasonably considered to be of a sensitive nature and normally held in confidence by physicians.

4. Investigator Ruth Whitney, of the Medical Practice Board, conducted a phone interview on 12/28/04 with Dr. Smith-Horn. Dr. Smith-Horn told Whitney that the records were left in the garage and that she had made arrangements with a company that shreds documents (All Cycle) to pick up the boxes. Dr. Smith-Horn stated these records were not destroyed before she left Vermont and that she had left them at her residence.

5. Dr. Smith-Horn told Investigator Whitney that the documents were not medical records, but were IME's (Independent Medical Evaluation Reports) that were a matter of public record. Examination of the records did not corroborate Dr. Smith-Horn's statements. The written documents included medical records and did not appear to constitute public records.

6. Investigator ~~Whitney~~  
Nenninger contacted All Cycle regarding the medical records and Dr. Smith-Horn. All Cycle was able to look in their data base and advised that at no time did All Cycle go to 130 Bayfield Drive or have a request to do so. All Cycle also stated that they would have set up an account and even if no records were left for them to pickup, they would have a record of that. Investigator ~~Whitney~~  
Nenninger followed up with other area companies who do shredding pickups, and was unable to locate any record of any arrangement for a pick up at 130 Bayfield Drive in Shelburne.

#### Prescribing Matters

7. Board investigation also determined that Dr. Smith-Horn was writing narcotic prescriptions for coworkers at Occupational Health and Rehabilitation (OHR) in South

Burlington, including a receptionist (Beata Lipski), her boyfriend (Robert Byrd), and her husband, Wesley Horn, without keeping any proper medical charts or records.

8. ~~Dr.~~ Dr. Smith-Horn was working at OHR, in South Burlington while she was living in Vermont. OHR advised me that they did not have any medical records in their files for Dr. Melissa Smith-Horn, Wesley Horn, or Susan Anderson, PA. OHR also advised me that they had fired a receptionist for forging prescriptions, Beata Lipski, and that she might have been involved with splitting narcotic prescriptions with Dr. Smith-Horn.

9. On July 29, 2005 Detective Sergeant Dee Glynn (State Police) and I interviewed an individual by the name of Beata Lipski. Glynn and I introduced ourselves and asked Lipski if she knew why we were there. Det. Glynn told Ms. Lipski that it was about fraudulent prescriptions. Ms. Lipski replied that occurred “a long time ago”. Ms. Lipski said she had lost her job at Occupational Health & Rehabilitation (she had been there since 05/99) and that she thought the matter was over. She admitted to making a “mistake” and said she had “screwed up” by forging P.A. Susan Anderson’s signature on some prescriptions. Lipski told us that she forged Anderson’s name about six or seven times. Lipski said she picked Susan Anderson’s name to forge because she writes very neat and it was the easiest name to copy.

10. I asked Ms. Lipski about Dr. Smith-Horn. She was reluctant to provide information to us. Ms. Lipski told us “it” was her fault and that she did not want to get anyone else in trouble, and she would take the blame for everything. Initially, Ms. Lipski told me that Dr. Smith-Horn wrote her one prescription after she (Lipski) told the doctor that her leg was painful. Eventually, Ms. Lipski admitted to us that Smith-Horn had come to her and told her that her husband, Wesley Smith, had a drug problem and that Dr. Smith-Horn needed Ms. Lipski’s help.

11. Dr. Smith-Horn asked Ms. Lipski if she would fill a prescription for narcotics that the doctor would write in Lipski’s name. However, the drugs would be for Dr. Smith-Horn’s

husband. Ms. Lipski agreed to get the prescription filled and to give the narcotics to Dr. Smith-Horn. She did so. Ms. Lipski said the first time she took about 5 pills out of the bottle to keep for herself. She did not tell Smith-Horn, because Dr. Smith-Horn did not know that Lipski herself had a drug problem. Ms. Lipski told us the next time Dr. Smith-Horn asked her to fill a prescription for narcotics, she filled it but told Smith\_Horn that the whole bottle was stolen from her car. On a third occasion, Ms. Lipski took about 10 pills from the prescription bottle before giving it to Dr. Smith-Horn.

12. Ms. Lipski said she eventually confided in Dr. Smith-Horn after that time and told her about her drug problem. Ms. Lipski admitted to Dr. Smith-Horn that the bottle of pills had not been stolen from her car, but that she had kept them. Dr. Smith-Horn told her this was ok. Ms. Lipski stated that she and Dr. Smith-Horn went on to split prescriptions a total of about seven times.

13. Ms. Lipski said at one point she approached Smith Horn and told her that she did not have any money, but needed drugs. Ms. Lipski stated that Dr. Smith-Horn than wrote a prescription for narcotics for Lipski to keep just for herself.

14. On Tuesday August 2, 2005, Board investigator Philip Ciotti and I interviewed Beata Lipski and her boyfriend, Robert Byrd. Both Lipski and ~~Byrd~~ provided written sworn statements admitting to having received prescriptions for narcotics, written in their names by Dr. Melissa Smith-Horn, filling these, and later splitting the narcotic prescriptions with Dr. Smith-Horn.

15. Mr. Byrd advised us that initially it was just Ms. Lipski getting narcotic prescriptions from Dr. Smith-Horn, but he saw this was an easy way for them both to get drugs, since they both had a drug addiction. Mr. ~~Byrd~~ said that he would go into OHR and meet with Dr. Smith-Horn in her office and received from her prescriptions for Vicodin, Hydrocodone, Loracet, and Percocet.

Mr. Byrd said the arrangement was that Dr. Smith-Horn would write the prescription in his name, and once he filled the prescription at a pharmacy, he would either go into OHR and give Dr. Smith-Horn her share of the pills (half) or he would send the pills into the office with Ms. Lipski. Mr. Byrd said that Dr. Smith-Horn told him the narcotics were for her husband, because he had an addiction problem.

16. Mr. Byrd advised us that although he had been to OHR for care, it was for an unrelated reason, and that Dr. Smith-Horn never actually saw him as a patient or performed a physical on him. Medical charts provided by OHR verify that Byrd did have a medical exam on June 20, 2005, as requested by a potential employer. The medical charts or records in no way involved Dr. Smith-Horn.

17. Ms. Lipski verified that she received prescriptions for DEA Scheduled narcotics, i.e., Vicodin, Percocet, Hydrocodone, and Loracet, from Dr. Smith-Horn. Ms. Lipski also stated that in her view she did not have a genuine doctor-patient relationship with Dr. Smith-Horn and had never been examined by Dr. Smith-Horn. OHR indicated in response to my inquiry that Ms. Lipski had never seen Dr. Smith-Horn for medical reasons and did not have a medical chart or record as to the narcotic prescriptions that Dr. Smith-Horn wrote to her. Ms. Lipski said she had told Dr. Smith-Horn of her drug problem and that of her boyfriend, Robert Byrd. Ms. Lipski said she would meet with Dr. Smith-Horn in her office and that Dr. Smith-Horn would write out a prescription for narcotics. Ms. Lipski said she would get the prescription filled at a local pharmacy, and keep half of the pills for her, and give the other half to Dr. Smith-Horn.

18. A pharmacy check of pharmacies revealed that Ms. Lipski had filled one prescription at Brooks Pharmacy for sixty Hydrocodone on June 21, 2004. Mr. Byrd filled one prescription for Vicodin on May 19, 2004, one for Hydrocodone on June 15, 2004, one for Percocet on June 23, 2004. Each of these prescriptions were written by Dr. Smith-Horn. Kinney

Drugs verified prescriptions written by Dr. Smith-Horn and filled by Ms. Lipski for Hydrocodone on April 22, 2004, May 5, 2004, and May 24, 2005, as well as one for Roxicet on June 11, 2004. Kinney Drugs also provided the original prescriptions written by Dr. Smith-Horn and filled by Mr. Byrd for Roxicet on June 4, 2004 and Hydrocodone on June 17, 2004.

#### **Admissions of Dr. Smith-Horn**

19. On August 2, 2005 at approximately 3:05 pm Dr. Smith-Horn returned my telephone call to her. Investigator Ciotti and I interviewed her regarding the two cases that are currently open before the Board of Medical Practice. During the interview, Dr. Smith-Horn admitted to writing prescriptions for coworkers. She stated that she had brought their charts to Florida and destroyed them after six months. Dr. Smith-Horn said she did not perform a physical exam on the co-worker patients. Dr. Smith-Horn provided contradictory statements regarding the medical records in question. After a substantial delay, Dr. Smith-Horn produced some purported medical records regarding care of her husband, Wesley Smith. These records appeared to be cursory and deficient and did not include any indication that a history had been taken or that a physical examination had been performed. There was no narcotics flow sheet or a proper records regarding general prescribing. The records did not include the full content or organization of the common SOAP note format.

20. Pharmacy records show Dr. Smith-Horn wrote Tussionex ext-rel and Penlac to her colleague, Susan Anderson, PA. When I asked Dr. Smith-Horn about her relationship with Beata Lipski, she told me that Ms. Lipski was a desk clerk, and she had no relationship with her involving prescriptions. Dr. Smith-Horn added that she thought that at one point Ms. Lipski had a problem with a tooth and that she might have written Lipski one prescription for a pain reliever.

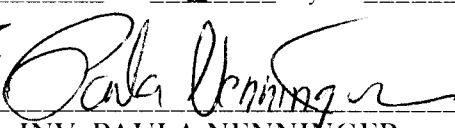
21. Dr. Smith-Horn admitted to us that her husband had received treatment for his drug problem and had been going through withdrawal at one point. Dr. Smith-Horn said she was



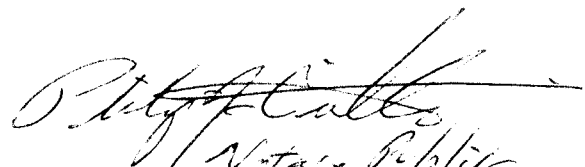
confused and panicked and could not think of anything else to do, and she wanted to help her husband. Dr. Smith-Horn admitted that she wrote prescriptions to Ms. Lipski and Mr. Bryd to fill, so that they would return a portion of the narcotics to her, so that she could provide them to her husband. Dr. Smith-Horn estimates having written about ten or twelve total prescriptions to Ms. Lipski and Mr. ~~Bryd~~ for Percocet, Hydrocodone and Loracet. Dr. Smith-Horn said Ms. Lipski would bring her a portion of the narcotic pills back from the pharmacy and put them into her office in her drawer. Dr. Smith-Horn also admitted to writing Ms. Lipski prescriptions for Hydrocodone because Lipski was in withdrawal at the time.

22. Dr. Smith-Horn admitted to us that not only did Lipski and ~~Bryd~~ keep a portion of the drugs but that she would also give Ms. Lipski and Mr. Byrd cash to pay for the actual cost of the narcotics, as billed by the pharmacy.

23. It appears that there is a reasonable evidentiary basis to indicate that Melissa Smith-Horn, MD, VT medical license 042-0010538, has engaged in unprofessional conduct in violation of 26 V.S.A. §§ 1354 and 1398 and that her conduct as a physician represents a serious danger to the health, safety, and welfare of patients and the public. It is my belief, based on the facts known to me, that emergency action by the Board is imperatively required for the protection of patients and the public.

Dated on August this 3 day of —, 2005.  
at Randolph, VT.  
  
INV. PAULA NENNINGER  
Affiant

At Randolph, this 3rd day of August, 2005, personally appeared before me Paula Nenninger And made oath to (affirmed under penalty of perjury) the truth of the foregoing.

  
Notary Public